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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERIKA M. HERNANDEZ and
and ERLIN DONALDO CHOJ XOL,

Docket No. 17-CV-5608 (NSR)

Plaintiffs,

ANSWER

-against-

HACIENDA MEXICANA CORP. d/b/a
HACIENDA RESTAURANT, JESUS
CISNEROS, and JUAN CISNEROS,

Defendants.

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Defendants, HACIENDA MEXICANA CORP. d/b/a HACIENDA RESTAURANT, JESUS CISNEROS, and JUAN CISNEROS (collectively “Defendants”), by their attorneys, The Law Firm of Adam C. Weiss, PLLC, hereby answer the Complaint in the above-captioned matter as follows:

1. Defendants deny the allegations contained in Paragraph “1” of the Complaint, except admit that Plaintiffs worked for Defendants.

2. Defendants deny the allegations contained in Paragraph “2” of the Complaint.

Jurisdiction and Venue

3. Defendants deny the allegations contained in Paragraph “3” of the Complaint.

4. Defendants deny the allegations contained in Paragraph “4” of the Complaint.

5. Defendants deny the allegations contained in Paragraph “5” of the Complaint.

6. Defendants admit the allegations contained in Paragraph “6” of the Complaint.

Parties

7. Defendants deny the allegations contained in Paragraph “7” of the Complaint, except admit she was a non-exempt employee of Defendants.

8. Defendants deny the allegations contained in Paragraph “8” of the Complaint, except admit he was a non-exempt employee of Defendants.

9. Defendants admit the allegations contained in Paragraph “9” of the Complaint.

10. Defendants deny the allegations contained in Paragraph “10” of the Complaint.

11. Defendants deny the allegations contained in Paragraph “11” of the Complaint.

12. Defendants admit the allegations contained in Paragraph “12” of the Complaint.

13. Defendants deny the allegations contained in Paragraph “13” of the Complaint, except admit that Juan is Jesus’s father.

14. Defendants deny the allegations contained in Paragraph “14” of the Complaint.

15. Defendants deny the allegations contained in Paragraph “15” of the Complaint.

16. Defendants deny the allegations contained in Paragraph “16” of the Complaint.

17. Defendants admit the allegations contained in Paragraph “17” of the Complaint.

Factual Allegations

18. Defendants deny the allegations contained in Paragraph “18” of the Complaint.

19. Defendants deny the allegations contained in Paragraph “19” of the Complaint.

20. Defendants deny the allegations contained in Paragraph “20” of the Complaint.

21. Defendants deny the allegations contained in Paragraph “21” of the Complaint.

22. Defendants deny the allegations contained in Paragraph “22” of the Complaint.

23. Defendants deny the allegations contained in Paragraph “23” of the Complaint.

24. Defendants deny the allegations contained in Paragraph “24” of the Complaint.

25. Defendants deny the allegations contained in Paragraph “25” of the Complaint.

26. Defendants deny the allegations contained in Paragraph “26” of the Complaint.

27. Defendants deny the allegations contained in Paragraph “27” of the Complaint.

28. Defendants deny the allegations contained in Paragraph “28” of the Complaint.

29. Defendants deny the allegations contained in Paragraph “29” of the Complaint, except admit to them as to Jesus Cisneros.

30. Defendants deny the allegations contained in Paragraph “30” of the Complaint, except admit to them as to Jesus Cisneros.

31. Defendants deny the allegations contained in Paragraph “31” of the Complaint, except admit to them as to Jesus Cisneros.

32. Defendants deny the allegations contained in Paragraph “32” of the Complaint, except admit to them as to Jesus Cisneros.

33. Defendants deny the allegations contained in Paragraph “33” of the Complaint, except admit to them as to Jesus Cisneros.

34. Defendants deny the allegations contained in Paragraph “34” of the Complaint.

35. Defendants admit the allegations contained in Paragraph “35” of the Complaint.

36. Defendants deny the allegations contained in Paragraph “36” of the Complaint.

37. Defendants deny the allegations contained in Paragraph “37” of the Complaint.

First Cause of Action

38. Defendants repeat and reallege each and every response contained in Paragraphs “1” through “37” of this Answer with the same force and effect as if fully set forth at length herein.

39. Defendants deny the allegations contained in Paragraph “39” of the Complaint.

40. Defendants deny the allegations contained in Paragraph “40” of the Complaint.

41. Defendants deny the allegations contained in Paragraph “41” of the Complaint.

42. Defendants deny the allegations contained in Paragraph “42” of the Complaint.

43. Defendants deny the allegations contained in Paragraph “43” of the Complaint.

44. Defendants deny the allegations contained in Paragraph “44” of the Complaint.

Second Cause of Action

45. Defendants repeat and reallege each and every response contained in Paragraphs “1” through “44” of this Answer with the same force and effect as if fully set forth at length herein.

46. Defendants deny the allegations contained in Paragraph “46” of the Complaint.

47. Defendants deny the allegations contained in Paragraph “47” of the Complaint.

48. Defendants deny the allegations contained in Paragraph “48” of the Complaint.

49. Defendants deny the allegations contained in Paragraph “49” of the Complaint.

50. Defendants deny the allegations contained in Paragraph “50” of the Complaint.

Third Cause of Action

51. Defendants repeat and reallege each and every response contained in Paragraphs “1” through “50” of this Answer with the same force and effect as if fully set forth at length herein.

- 52. Defendants deny the allegations contained in Paragraph “52” of the Complaint.
- 53. Defendants deny the allegations contained in Paragraph “53” of the Complaint.
- 54. Defendants deny the allegations contained in Paragraph “54” of the Complaint.
- 55. Defendants deny the allegations contained in Paragraph “55” of the Complaint.

Fourth Cause of Action

56. Defendants repeat and reallege each and every response contained in Paragraphs “1” through “55” of this Answer with the same force and effect as if fully set forth at length herein.

- 57. Defendants deny the allegations contained in Paragraph “57” of the Complaint.
- 58. Defendants deny the allegations contained in Paragraph “58” of the Complaint.
- 59. Defendants deny the allegations contained in Paragraph “59” of the Complaint.
- 60. Defendants deny the allegations contained in Paragraph “60” of the Complaint.
- 61. Defendants deny the allegations contained in Paragraph “61” of the Complaint.

AFFIRMATIVE DEFENSES FOR EACH AND EVERY CAUSE OF ACTION

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The complaint fails to set forth a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendants have fully compensated its employees for all work performed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The Plaintiff’s Fair Labor Standards Act ("FLSA") claims against the Defendants are barred because the Defendants were not Plaintiffs' employer as defined under FLSA.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The Plaintiff cannot recover liquidated damages under FLSA because, in accordance with

29 U.S.C. §260, the Defendants at all times acted in good faith and believed that their conduct was not in violation of FLSA.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

To the extent that the Plaintiff could establish that the Defendants are liable under FLSA (and they cannot), the Plaintiff's recovery must be limited because the Defendants did not act willfully.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Any act or omission on the part of the Defendants was in good faith and it had reasonable grounds for believing that such acts or omissions were not in violation of and were in conformity with FLSA, New York Labor Law, written administrative regulations, orders, rulings, approvals or interpretations of the U.S. Department of Labor and, therefore, some or all of the claims in the complaint are barred.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's complaint fails to state a claim upon which liquidated damages or attorneys' fees may be awarded.

AS FOR AN EIGHTH AFFIRMATIVE DEFENSE

The complaint is barred, in whole or in part, by the doctrine of payment.

AS FOR AN NINTH AFFIRMATIVE DEFENSE

The Defendants are entitled to a set-off with respect to every Plaintiff for monies paid for any hours that a particular Plaintiff was not working.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

This action is barred, in whole or in part, as a result of the Plaintiff's unclean hands, own wrongful and dilatory conduct and their own actions or inactions.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

This Court lacks jurisdiction pursuant to the FLSA over the Defendants in that the Defendants are not entities with gross earnings in excess of \$500,000.00.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

The Defendants reserve the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Plaintiffs' claims. These additional defenses cannot be articulated at this time due to the Plaintiffs' failure to properly describe its claims with sufficient particularity in the complaint.

WHEREFORE, Defendants demand judgment dismissing the Complaint, with prejudice, and awarding Defendants' attorneys' fees, costs and disbursements of this action, and such other and further relief as this Honorable Court deems just, equitable and proper.

Dated: September 27, 2017
Glen Cove, New York

Respectfully submitted,



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